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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,604	02/23/2004	Brian Rose	P2492C-961	3218
21839	7590	02/10/2006	EXAMINER	
BUCHANAN INGERSOLL PC (INCLUDING BURNS, DOANE, SWECKER & MATHIS) POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			CASCHERA, ANTONIO A	
			ART UNIT	PAPER NUMBER
			2676	

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Y

**Office Action Summary**

Application No.

10/785,604

Applicant(s)

ROSE, BRIAN

Examiner

Antonio A. Caschera

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-27 and 29-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-27 and 29-58 is/are allowed.
- 6) ☒ Claim(s) 59-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 12/08/05 has been entered.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 59-69 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In reference to claims 59-69, the language of the claims is directed towards a, "color palette," which is merely an arrangement of data, therefore it does not provide a concrete, useful and tangible result and hence is nonstatutory. See MPEP 2106 IV (B)(1).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 61 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 3 mentions, "...the blends are created from the non web-safe chromatic colors..." (see lines 1-2 of claim 61) and claims dependency upon claim 59. Claim 59, however, discloses two sets of blends, blends of web-safe and blends of non web-safe colors (see lines 7-10 of claim 59). Claim 61 is deemed indefinite because claim 61 lacks the specific "web-safe" or "non web-safe" identifier to particularly point out and distinctly claim which blends the limitations of claim 61 further limit. The office will interpret the claim as applying to, "non web-safe blends" however suggests correcting the claim to read something to this effect:

"The method of claim 59, wherein the non web-safe blends are created from the non web-safe chromatic colors via incremental changes in saturation and value."

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 59-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adobe Systems Inc. (*Adobe Photoshop 6.0 User Guide for Windows and Macintosh*, 2000, Adobe Systems Inc.), Microsoft Word 2000 (Microsoft Corporation. © 1983-1999.) and further in view of Beretta (U.S. Patent 5,254,978)

In reference to claims 59 and 69, Adobe Systems Inc. discloses user selection and manipulation of colors utilizing color tables in a graphics program named, "Adobe Photoshop 6.0" which is a well-known software program in the art (see page 330, 2<sup>nd</sup> paragraph). Adobe discloses the ability to create a web-safe color table (see page 330, "Generating a color table" and 331, under "web") which, as disclosed by the applicant, a web-safe color is the opposite of a non web-safe color which is one that does not provide a consistent appearance across different platforms (see page 2, lines 5-7 of applicant's disclosure). Adobe also discloses selecting colors from an image, selecting specific web-safe or non-web-safe colors (see page 334, under "To select all Web-safe colors" and "To select all non-Web-safe colors"). Adobe does not explicitly disclose selecting or grouping achromatic colors however Microsoft Corporation does. Microsoft discloses a color palette selection tool from their program Microsoft Windows 2000, which organizes standard colors in way which groups achromatic colors together (see screenshot (1) of Microsoft Word 2000 color palette). Neither Adobe nor Microsoft explicitly disclose grouping the above sets of colors together in one palette. Beretta discloses a reference color selection system wherein individual colors are displayed in a predetermined order according to color space coordinates such as order of lightness and chroma values (see column 15, lines 17-24). Although Beretta does not explicitly disclose grouping the colors in a palette by specific web-safe, non web-safe and achromatic colors, it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the grouping of specific web-safe, non web-safe and achromatic colors of Adobe and Microsoft with the arranging of color groups in a single color selection palette as disclosed by Beretta in order to allow users to better select suitable colors by displaying related colors adjacent one another applying the, "...well-

known principles of color perception theory that human perception of color is influenced by the effect of adjacent colors,” (see column 1, lines 40-51 of Beretta).

In reference to claims 60 and 63, Adobe Systems Inc., Microsoft Corporation, and Beretta disclose all of the claim limitations as applied to claim 59 above in addition, Adobe discloses the ability to sort a color table by hue (see page 332, under “Sorting the color table”).

In reference to claims 61 and 64, Adobe Systems Inc., Microsoft Corporation, and Beretta disclose all of the claim limitations as applied to claim 59 above. Although Adobe does disclose the ability to sort a color table by luminance (see page 332, under “Sorting the color table”), Adobe does not explicitly disclose the non web-safe blends created from non web-safe colors via incremental changes in saturation and value however Microsoft does. Microsoft discloses a custom color palette selection tool whereby custom colors maybe chosen by incrementing values of saturation and luminance or value (see screenshot’s (2) and (3) of Microsoft Word 2000 color palette). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the color table groupings of web-safe and non webs-safe colors of Adobe and the creation of alternate colors created by adjusting saturation and luminance values of Microsoft with the arranging of color groups in a single color selection palette as disclosed by Beretta in order to allow users to better select suitable colors by displaying related colors adjacent one another applying the, “...well-known principles of color perception theory that human perception of color is influenced by the effect of adjacent colors,” (see column 1, lines 40-51 of Beretta).

In reference to claim 62, Adobe Systems Inc., Microsoft Corporation, and Beretta disclose all of the claim limitations as applied to claim 59 above in addition, Adobe discloses the ability to sort a color table by luminance (see page 332, under “Sorting the color table”).

In reference to claim 65, Adobe Systems Inc., Microsoft Corporation, and Beretta disclose all of the claim limitations as applied to claim 59 above in addition, Beretta discloses a color palette where colors are displayed and arranged in rows and columns (see #82, 71, 88, 73, 85, 86, 74, 87 of Figure 4). Beretta does not explicitly disclose one grouping of colors comprising one row or column of a grid however Microsoft Corporation does. Microsoft discloses arranging achromatic colors in a row of hexagonal shaped color grid areas (see screenshot (1) of Microsoft Word 2000 color palette). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement groupings of web-safe and non webs-safe colors of Adobe and a color palette arranged by rows and columns disclosed by Beretta with the ordering of color groups in a row of the palette as Microsoft in order to allow users to better select suitable colors by displaying related colors adjacent one another applying the, “...well-known principles of color perception theory that human perception of color is influenced by the effect of adjacent colors,” (see column 1, lines 40-51 of Beretta).

In reference to claim 66, Adobe Systems Inc., Microsoft Corporation, and Beretta disclose all of the claim limitations as applied to claim 65 above however neither Adobe, Microsoft nor Beretta explicitly disclose positioning a color group at an edge of the grid of a row or column however the office believes such a positioning of color grouping within the grid of the color palette to be a matter of design choice as the exact location of color groups within the color palette does not affect the overall operation of the invention.

In reference to claim 67, Adobe Systems Inc., Microsoft Corporation, and Beretta disclose all of the claim limitations as applied to claim 65 above in addition, Microsoft discloses arranging achromatic colors in a row of a hexagonal shaped color grid areas from lightest to darkest (see screenshot (1) of Microsoft Word 2000 color palette).

In reference to claim 68, Adobe Systems Inc., Microsoft Corporation, and Beretta disclose all of the claim limitations as applied to claim 65 above however neither Adobe, Microsoft nor Beretta explicitly disclose one row or column to contain a contiguous subgroup of web-safe colors and a second contiguous subgroup of non web-safe colors. It would have been obvious to one of ordinary skill in the art at the time the invention was made to arrange contiguous color subgroups associated with web-safe and non web-safe colors in one row or column in order to allow users to better select suitable colors by displaying related colors adjacent one another applying the, "...well-known principles of color perception theory that human perception of color is influenced by the effect of adjacent colors," (see column 1, lines 40-51 of Beretta).

### ***Response to Arguments***

5. The addition of claims 59-69 is noted.
6. Applicant's arguments filed 12/08/05 have been fully considered but they are not persuasive.

In reference to claims 59-69, Applicant argues that the Adobe reference does not disclose two different groups of colors arranged in respective contiguous groupings within a palette (see pages 14-15 of Applicant's Remarks). Adobe does disclose differentiating and determining



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colors from an image, selecting specific web-safe or non-web-safe colors (see page 334, under “To select all Web-safe colors” and “To select all non-Web-safe colors”). Such a limitation of arrangement is brought out by the Microsoft reference in which standard colors are organized in a way which groups achromatic colors together (see screenshot (1) of Microsoft Word 2000 color palette). Further, the Berretta reference was incorporated to disclose displaying individual colors in a predetermined order according to color space coordinates such as order of lightness and chroma values (see column 15, lines 17-24). These colors are displayed and arranged in a color palette as shown in Berretta (see “color palette region” and #84 of Figure 6 of Berretta).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Adobe discloses selecting and determining web-safe from non-safe colors, Microsoft discloses organizing achromatic colors together and Berretta discloses displaying individual colors in a predetermined order in a color palette. It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the grouping of specific web-safe, non web-safe and achromatic colors of Adobe and Microsoft with the arranging of color groups in a single color selection palette as disclosed by Beretta in order to allow users to better select suitable colors by displaying related colors adjacent one another applying the, “...well-known principles of color perception theory that human perception of

color is influenced by the effect of adjacent colors,” (see column 1, lines 40-51 of Beretta). Such motivation is just as techniques to “standardize” color as perceived by users via different output devices is greatly desired and therefore, the combination of the above references is just as interpreted by the Office.

***Allowable Subject Matter***

7. Claims 22-27 and 29-58 are allowed.

The following is an examiner’s statement of reasons for allowance:

In reference to claims 22, 35, 41, 47 and 53, the prior art of record (Adobe Systems Inc. (Adobe Photoshop 6.0 User Guide for Windows and Macintosh, 2000. Adobe Systems Inc.), Microsoft Word 2000 (Microsoft Corporation. © 1983-1999.) and Beretta (U.S. Patent 5,254,978)) does not disclose grouping web-safe color blends arranged to form a square wherein the colors are situated on one side of a diagonal of the square horizontally in order of decreasing saturation towards the diagonal and vertically in order of decreasing value towards the diagonal, and the colors in the other side of the diagonal are arranged horizontally decreasing in value towards the diagonal and vertically decreasing in saturation towards the diagonal, in combination with the further limitations of claims 22, 35, 41, 47 and 53 respectively.

In reference to claims 23-27, 29-34, 36-40, 42-46, 48-52 and 54-58, claims 23-27, 29-34, 36-40, 42-46, 48-52 and 54-58 are allowed because they claim dependency upon allowable claims 22, 35, 41, 47 and 53.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Antonio Caschera whose telephone number is (571) 272-7781. The examiner can normally be reached Monday-Thursday and alternate Fridays between 7:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached at (571) 272-7691.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**571-273-8300 (Central Fax)**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (571) 272-2600.

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*pac*  
2/3/06



RICHARD HJERPE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600